

In the

United States Court of Appeals  
For the Ninth Circuit

JUL 8 1968

JOHN A. CROSS, et al.,

vs.

*Appellants,*

No. 21719

S.S. KAIMANA, her engines, etc., et al.,

*Appellees.*

JOHN A. CROSS, et al.,

vs.

*Appellants,*

No. 21719A

S.S. LANAKILA, her engines, etc., et al.,

*Appellees.*

JOHN A. CROSS, et al.,

vs.

*Appellants,*

No. 21719B

S.S. ALASKA BEAR, her engines, etc., et al.,

*Appellees.*

JOHN A. CROSS, et al.,

vs.

*Appellants,*

No. 21719C

S.S. PACIFIC BEAR, her engines, etc., et al.,

*Appellees.*

JOHN A. CROSS, et al.,

vs.

*Appellants,*

No. 21719D

S.S. COAST PROGRESS, her engines, etc., et al.,

*Appellees.*

FILED

Appendix to  
Reply Brief of Appellants

JUN 28 1968

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## *Appendix*

### *Excerpts from record*

#### *First Preferred Ship Mortgage (C.T. 8-A—8-AA)*

The mortgage papers in the present record show numerous substantive safeguards and policing procedures in the mortgage documents.

#### ¶ 1

The purchaser promised that no person would have any right or power to create "any liens whatsoever other than liens for crew's wages and salvage . . ." (C.T. 8-E):

§ 7. Neither the Shipowner, any charterer, the Master of the Vessel, nor any other person has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon the Vessel, its freights, profits or hire, any liens whatsoever other than liens for crew's wages and salvage and the lien of this Mortgage.<sup>1</sup>

#### ¶ 2

The ship purchaser agreed to refrain from continuing any lien, encumbrance, or charge on the vessel and cause such liens to be paid or discharged within 20 days after the sums become due and payable (C.T. 8-F):

§ 9. Except for the lien of this Mortgage, the Shipowner will not suffer to be continued any lien, encumbrance or charge on the Vessel, and in due course and in any event within twenty (20) days after the same becomes due and payable, will pay or cause to be discharged or make adequate provision for the satisfaction or discharge of all claims or demands, or will cause the Vessel to be released or discharged from any lien, encumbrance or charge therefor.<sup>2</sup>

The purchaser promised that the mortgagee or its authorized representatives had full and complete access to the vessel (C.T. 8-H):

---

1. See also Art. 1 § 5 of Exhibit C to petition; C.T. 820:7-8 and Art. 1, clause 9 of Exhibit M to petition; C.T. 830: 24-26.

2. See also Art. 1, clause 9 of Exhibit M to petition; C.T. 830: 24-26.

## ¶ 3

§ 12. The Shipowner will at all reasonable times afford the Mortgagee or its authorized representatives full and complete access to the Vessel for the purpose of inspecting the same and its cargo and papers and, at the request of the Mortgagee, will deliver for inspection copies of any and all contracts and documents relating to the Vessel, whether on board or not.<sup>3</sup>

## ¶ 4

The purchaser agreed to furnish to the mortgagee “from time to time such information concerning the operations and financial condition of the [purchaser] as to the mortgagee may reasonably request” (C.T. 8-J):

§ 21. The Shipowner will furnish to the Mortgagee from time to time such information concerning the operations and financial condition of the Shipowner as the Mortgagee may reasonably request.<sup>4</sup>

## ¶ 5

The purchaser agreed to refrain from creating any liens other than “liens for current crew’s wages and salvage incurred” (C.T. 8-K):

§ 22. The Shipowner covenants and agrees that without the written approval of the Mortgagee, so long as this Note shall be outstanding, the Shipowner will not, except as otherwise permitted below in this § 22:

\* \* \*

(d) Create, assume or suffer to exist any further mortgage, pledge, encumbrance, lien or charge of any kind upon any of its property or assets, whether now owned or hereafter acquired, or enter into any conditional sale or other title retention agreement, except (i) the Mortgage and two Preferred Mortgages on the vessel S.S. INDIAN BEAR, (ii) liens for current crew’s wages and salvage

3. See also Art. 1 § 9 of Exhibit C to petition; C.T. 820: 7-8 and Art. 1, clause 9 of Exhibit M to petition; C.T. 830: 24-26.

4. See also Art. 1 § 9 of Exhibit C to petition; C.T. 820: 7-8 and Art. 1, Clause 9 of Exhibit M to petition; C.T. 830: 24-26.

incurred in the ordinary course of operation of the Vessel and on said S.S. INDIAN BEAR, and (iii) liens for taxes not delinquent or being contested in good faith;<sup>5</sup>

## § 6

(e) Incur any indebtedness except (i) the indebtedness evidenced by the Note, (ii) the indebtedness secured by the Mortgages on the vessel S.S. INDIAN BEAR, (iii) current liabilities for accounts payable and expense accruals incurred or assumed in the ordinary course of business, which accounts payable shall not have remained unpaid for a period of six months after the same became an account payable or which shall be currently contested by the Shipowner in good faith, (iv) liabilities for taxes not delinquent or being contested in good faith, and (v) borrowings for a period of less than one year in an aggregate principal amount not exceeding \$100,000 at any one time outstanding;<sup>6</sup>

## § 7

The preferred ship mortgage sets forth in great detail a number of other general limitations upon the activities of the mortgagor that requires it to carry on all its business affairs so as to protect the security of the ship mortgage (C.T. 8-B - 8-W):

§ 16. (a) The Shipowner will, at its own expense, carry and maintain in connection with the Vessel insurance in such amounts, in such form and against such risks as the Mortgagee may reasonably require and with such insurance companies, underwriters, associations, clubs or funds as the Mortgagee may approve.

(b) All insurance which the Shipowner may be required to carry and maintain as provided in § 16 (a) hereof shall name the Mortgagee as an assured.

\* \* \*

§ 18. The Shipowner will not, without the written consent of the Mortgagee first had and obtained, consent to any

5. See also Art. 1, clause 9 of Exhibit M to petition; C.T. 830: 24-26.

6. See also Art. 1 clauses 20, 21 of Exhibit M to petition; C.T. 830: 24-26.

§ 7

modification or amendment of the Charter (other than an extension thereof), waive or release any obligation of the Charterer under the Charter, consent or agree to any act or omission to act on the part of the Charterer under the Charter, which act or omission without such consent or agreement would constitute a default under the Charter, appoint or approve any arbitrator whose appointment by the Shipowner is contemplated by the Charter, or fail promptly and diligently to exercise each and every right which it may have under the Charter, or fail to deliver a copy of each demand, notice, communication or other document (except those received in the regular course of business) delivered to it in any way relating to the Charter. Any one written consent hereunder shall not be construed as a waiver of the necessity for a further written consent to any second exercise by the Shipowner of any privilege granted by the previous written consent.

§ 8

§ 22. The Shipowner covenants and agrees that without the written approval of the Mortgagee, so long as this Note shall be outstanding, the Shipowner will not, except as otherwise permitted below in this § 22:

(a) Engage in any business other than owning, chartering and operating the Vessel and the vessel S.S. INDIAN BEAR, Official Number 252568;

§ 9

(b) Declare or pay any dividend (except dividends payable in its capital stock now or hereafter authorized) on any shares of any class of its capital stock now or hereafter outstanding, or return any capital to its stockholders or make any other distribution, payment or delivery of property or cash to its stockholders as such, or redeem, retire, purchase or otherwise acquire, directly or indirectly, any shares of any class of its capital stock now or hereafter outstanding;

§ 10

(c) Enter into any transaction of merger or consolidation with any other legal entity or corporation or sell,



lease or transfer or otherwise dispose of all or a substantial part of its assets except said vessel S.S. INDIA BEAR;<sup>7</sup>

### § 11

As a sanction to require compliance with these provisions, the seller or lender has the power to accelerate a time of payment of the full amount of loan, in case of any default in the items discussed above and in many other respects (C.T. 8-L, - 8-0):

§ 1. In case any one or more of the following events herein termed "events or default" shall happen:

(a) Default in the payment of any amount of principal of or interest of the Note when due and the same shall continue for ten (10) days;<sup>8</sup>

(b) If the payment of the proceeds of sale or seizure of, or of any insurance carried on or in respect of the Vessel, shall not have been received by the Mortgagee within ten (10) days after the same are payable;

(c) Failure on the part of the Shipowner diligently to exercise any right under the Charter or any renewal thereof and the continuance of same for twenty (20) days after receipt by the Shipowner of notice thereof from the Mortgagee;

(d) Default in the due and punctual observance and performance of any provision of § § 5, 8, 9, 10, 13, 14, 18 or 22 of Article I hereof;

\* \* \*

### § 12

"Then and in each and every such case the Mortgagee shall have the right to:

(1) Declare the principal amount of the Note together with accrued interest thereon to be due and payable forthwith, and upon such declaration the entire unpaid principal of and interest on the Note shall become and be immediately due and payable, and there-

7. See also §§ 67, 75.

8. See also Art. II § 1, subd. (a) of Exhibit C to petition; C.T. 820:7-8, and Art. II, clause 1, subd. (a) of Exhibit M to petition; C.T. 830: 24-26.

after shall bear interest at the rate of six per cent (6%) per annum;<sup>9</sup>

### § 13

To supplement these sanctions the mortgagee was given power to take a variety of other actions in policing his loan and the mortgagor's affairs (C.T. 8-B - 8-W):

§ 1. In case any one or more of the following events herein termed "events of default" shall happen:

\* \* \*

"Then and in each and every such case the Mortgagee shall have the right to:

\* \* \*

(2) Exercise all of the rights and remedies in foreclosure and otherwise given to mortgages by the provisions of the Ship Mortgage Act, 1920, and all acts amendatory thereof and supplemental thereto;

### § 14

(3) Bring suit at law, in equity, or in admiralty, as it may be advised, to recover judgment for any and all amounts due under the Note, or otherwise hereunder, and collect the same out of any and all property of the Shipowner whether covered by this Mortgage or otherwise;<sup>10</sup>

### § 15

(4) Take and enter into possession of the Vessel at any time, wherever the same may be, without legal process and without being responsible for loss or damage; and the Shipowner or other person in possession forthwith upon demand of the Mortgagee shall surrender to the Mortgagee possession of the Vessel, . . ."<sup>11</sup>

9. See also Art. II, § 1, subd. (1) of Exhibit C to petition; C.T. 820:7-8 and Art. II, clause 1, subd. (1) of Exhibit M to petition; C.T. 830:24-26.

10. See also Art. II, § 1, subd. (2) of Exhibit C to petition; C.T. 820: 7-8 and Art. II, clause 1, subd. (2) of Exhibit M to petition; C.T. 830: 24-26.

11. See also Art. II, § 1, subd. (3) of Exhibit C to petition; C.T. 820: 7-8 and Art. II, clause 1, subd. (4) of Exhibit M to petition; C.T. 830: 24-26.

## § 16

(5) Take and enter into possession of the Vessel at any time, wherever the same may be, without legal process, and if it seems desirable to the Mortgagee and without being responsible for loss or damage, sell the Vessel at any place and at such time as the Mortgagee may specify and in such manner as the Mortgagee may deem advisable, free from any claim by the Shipowner in admiralty, in equity, at law or by statute, after first giving notice of the time and place of sale with a general description of the property in the following manner:<sup>12</sup>

\* \* \*

*Seafaring Fringe Benefits, Welfare, Pension, Employment Security, Vacations, as of January 1, 1957*, published by U. S. Department of Commerce (Exhibit 2 attached to Trustee Exhibit 1, p. 1.)

## § 17

The establishment and rapid expansion of pension and welfare plans by employers and unions through collective bargaining is recognized as one of the outstanding developments of the seafaring industry in recent years. Since fringe benefits are being accepted more and more as a substantial component of the employer's wage bill, it may be of interest to present a brief history of welfare (health and insurance) and pension plans.

\* \* \*

## § 18

The most important single action which gave impetus to the expansion of negotiated fringe benefits, was the United Mine Workers Union's industry-wide-pension-welfare plan, established in 1946, covering almost a million potential beneficiaries. Additional momentum was generated by the steel industry employees' benefit program in 1949. In both instances these plans crystallized from labor-management negotiations. Other factors contributing substantially to the rapid growth of employee coverage under negotiated welfare-pension plans were:

12. See also Art. II, § 1, subd. (4) of Exhibit C to petition; C.T. 820: 7-8 and Art. II, clause 1, subd. (5) of Exhibit M to petition; C.T. 830: 24-26.

## ¶ 19

1. The government's tax policy permitting deductions for welfare and pension contributions.

## ¶ 20

2. The National Labor Relations Board's and Supreme Court's decisions and affirmation holding employers responsible for bargaining in regard to pensions.

## ¶ 21

3. The Steel Fact Finding Board's report that industry had both social and economic obligations to provide workers with social insurance and pensions.

## ¶ 22

4. The decline in purchasing power of Federal Social Security payments, resulting from rising living costs.

## ¶ 23

Seafaring Fringe Benefits.—Concurrent with the rapidly expanding private social security programs in business establishments ashore, was the equally rapid development of seafaring pension-welfare plans. Since 1950, negotiations concerning this type of fringe benefits have been extended to such a degree that they must be considered substantial components of Maritime collective bargaining and operator-union contracts.

## ¶ 24

Union requests and subsequent negotiations for contract improvements have included "package" demands embracing basic wages, overtime, vacations for members of the seafaring unions, and have emphasized social security protection in the form of welfare-pension advantages and employment security.

\* \* \*

*Amendments to the Davis-Bacon Act*, Senate Report No. 963, 88th Cong., 2d Sess., March 17, 1964, p. 3 (Trustee Exhibit 5).

## ¶ 25

Welfare and pension plans have experienced a phenomenal growth. In a report of this committee issued in 1958 it was then estimated that almost 85 million persons were relying on benefits from such plans. According to recent figures furnished the committee by the Department of Labor, that number has now reached almost 110 million. The Department of Labor also advises that the employer's share of contributions to health and welfare benefit plans has increased from 47 percent in 1954 to 71 percent in 1961. Also, employers now finance 85 percent of the cost of retirement plans and almost all multiemployer and unfunded pension plans

are financed entirely by employer contributions. As stated in our 1958 report:

¶ 26

*Regardless of the form they take, the employer's share of the cost of these plans or the benefits the employers provide are a form of compensation.*

¶ 27

This view is additionally buttressed by the fact that the courts have held these benefit plans to be bargainable issues under provisions of the National Labor Relations Act requiring both parties to bargain collectively in good faith on "wages, hours, and other terms and conditions of employment." The courts have also held that an employer may be compelled to make payments he owes to a pension and welfare plan under the bonding provisions of the Miller Act.

#### THE NEED FOR AND EFFECT OF THE LEGISLATION

¶ 28

There are many localities throughout the country in which the great majority of contractors provide fringe benefits in addition to the cash wages paid to their employees. As we have indicated, *these fringe benefits clearly constitute a form of wages*. Therefore, if they are not included in the prevailing wage determinations, only a part of the compensation for employment is reflected. Under such circumstances, the minority of employers operating in the locality who do not provide the prevailing fringe benefits now enjoy an unfair advantage in bidding on Federal and federally assisted construction projects. By not providing for their employees the benefits that prevail in the locality these employers are now able to enter lower bids than the local employers who maintain adequate wage standards.

¶ 29

The Davis-Bacon Act does not define the term "wages" as used in the act. Because of the act's requirement that wages be paid unconditionally, fringe benefits that are contingent in nature cannot now be included in the wage determinations. [Emphasis added]

*ILWU-PMA Welfare Plan Agreement*, January 26, 1950. (Trustee Exhibit 12, p. 3).

§ 30

e. It is the understanding of the parties hereto that the employer contributions to be paid into the Fund shall not constitute or be deemed wages to the employees. Should such contributions be determined by any court or other governmental authority to be wages to the employees, it is agreed that the employers' contributions may be renegotiated to the end that such contributions theretofore or thereafter made plus the resulting additional taxes will not exceed the sum which the employers would pay hereunder if their contributions had not been so determined to be wages.<sup>13</sup>

\* \* \*

*Documents of the plans (Vessels' Exhibit 2)*

*MMP-PMA Welfare Plan Amended Agreement*  
(January 1, 1959)

§ 31

(d) It is further understood that payment of the contributions to the Association shall be deemed payment of contributions into the Fund as of the moment they are transmitted to the Association. *It is intended that contributions of the Employers hereunder shall neither constitute nor be deemed wages or income due to licensed deck officers within the meaning of the state and federal income and employment tax laws.* Such contributions shall not in any manner be liable for or subject to the debts, contracts or liabilities of licensed deck officers, Employers, Association, or Union. No licensed deck officer shall have the right to receive any part of the contributions instead of benefits. No licensed deck officer may assign any benefit or receive a cash consideration in lieu of any benefit either upon the termination of the Plan, his

13. Compare *Genix Supply Co. v. Board of Trustees*, ..... Nev. ...., 438 P.2d 816 (March 29, 1968).

"Reference is made to the method of computation of the contributions to the trust funds, by monthly flat rates or hourly flat rate. We are not impressed with any special significance of that fact or that the language in the collective bargaining agreements and trust agreements use the word, 'contributions,' and even specify that contributions are not to be construed as wages. Those documents within themselves are drawn for taxation purposes."

termination of employment with any Employer, anyone's withdrawal from the Plan, or otherwise. [Emphasis added]

¶ 32

In the event that a ruling is issued or a determination is made that such contributions are "wages" or "income" for such purposes, the Union and the Association agree, if it is in any way possible, to make such amendments or revisions to this Agreement and to the said Declaration of Trust as are necessary to accomplish the aforesaid intention.

\* \* \*

¶ 33

§ 8. *Nonmember Contributions to the Fund.*

Employers who are not parties to the collective bargaining agreement signed by the Association, *by making like contributions as required hereunder*, and the Union, acting in the capacity of an employer, by making contributions to cover the cost of the benefits of the Plan hereinabove referred to, may participate in the MMP-PMA Welfare Plan and obtain the advantages for their employes (including Union officials) of the Plan on joint approval of and under terms specified by the Union and the Association. Such participation shall continue until either the Union or the Association withdraws its approval. Any such Employer and the Union, acting in the capacity of an employer, may withdraw from participation on written notice to the Trustees three months in advance of such withdrawal, but notwithstanding such withdrawal contributions for all days worked through the date of such withdrawal shall be paid.

*MEBA-PMA Welfare Plan—Third Amendment  
to Revised Agreement  
(February 1, 1954)*

¶ 34

"(2) *Covered Employment*—Under the terms of this agreement, Covered Employment means employment either heretofore or hereafter by a Contributing Employer in a position including night or weekend relief jobs and employment pursuant to Section 24 covered by the said Collective Bargaining Agreement dated November 1, 1951, as amended, between PMA and MEBA and employment covered by an

agreement between the said Union and a *nonmember participant in the MEBA-PMA Plan during the period the respective nonmember is participating and for which contributions are paid*. A licensed engineer shall not be regarded as employed in Covered Employment on any day for which he is not paid or entitled to be paid wages by a Contributing Employer. Vacation time shall not be considered days of Covered Employment for purposes of contributions." [Emphasis added]

*ARA-PMA Welfare Plan Revised Agreement*  
(December 10, 1957)

§ 35

*Covered Employment*—Under the terms of this agreement, Covered Employment means employment either heretofore or hereafter by a Contributing Employer in a position covered by the said basic Agreement between PMA and ARA and *employment covered by an agreement between the said Union and a nonmember participant in the ARA-PMA Welfare Plan during the period the respective nonmember is participating and for which contributions are paid*. A radio officer shall not be regarded as employed in Covered Employment on any day for which he is not paid or entitled to be paid wages by a Contributing Employer. [Emphasis added]

§ 36

\* \* \*

It is intended that contributions of the Employers hereunder shall neither constitute nor be deemed wages or income due to Employees within the meaning of the state and federal income and employment tax laws.

§ 37

\* \* \*

In the event that a ruling is issued or a determination is made that such contributions are "wages" or "income" for such purposes, the Union and the Association agree, if it is in any way possible, to make such amendments or revisions to this Agreement and to the said Declaration of Trust as are necessary to accomplish the aforesaid intention.



## MSO-PMA Welfare Agreement

(October 5, 1959)

## § 38

(b) If a Contributing Employer is delinquent or defaults in payment of contributions, the lien against the ship for seamen's wages shall be available to the Trustees for the amount of contributions due. If suit is brought to recover contributions, interest thereof shall be payable at the rate of 7% from the date they are due under § 2, and all costs of collecting such delinquent or defaulted contributions, including a reasonable attorney's fee, shall be paid by the Contributing Employer.

\* \* \*

## § 39

(e) It is further understood that payment of the contributions to the Association shall be deemed payment of contributions into the Fund as of the moment they are transmitted to the Association. It is intended that contributions of the Employers hereunder shall neither constitute nor be deemed income due to staff employes within the meaning of the state and federal income and employment tax laws.

\* \* \*

## § 40

(c) If such [non-member] employer should default or become delinquent in the payment of its contributions or in the performance of any other obligation under this Agreement or any amendments to this Agreement and should fail to cure such default or delinquency within ten (10) days after notice thereof from the Trustees, the Association, or the Union, *no applicant for welfare benefits shall be credited with any Covered Employment by such employer with respect to which such employer has not paid contributions.*

## § 41

(d) In the event that such employer should withdraw or be eliminated from participation in the plan as provided in § 8(a) of this Agreement or that its participation therein should be otherwise terminated prior to termination of the plan, it shall nevertheless remain obligated for Employer Contributions on account of Covered Employment occurring prior to the date of such elimination or termination and shall have no right to the return of any

contributions theretofore made, nor shall such employer have any other right in, to, or against the Fund, the Trustees, or any of the parties to this Agreement. In the event of such elimination or termination, staff employes applying for welfare benefits shall not be credited with any Covered Employment by such employer with respect to which such employer has not paid contributions.

\* \* \*

Members on whose behalf Pacific Maritime Association executed this agreement:

\* \* \*

Other Contributing Employers executing this agreement:

§ 42

\* \* \*

PACIFIC FAR EAST LINE

By T. E. CUFFE

*SIU Pacific District-PMA Pension Plan Agreement  
(July 31, 1957)*

§ 43

The initial Trustees designated by the Association shall be J. Paul St. Sure, T. E. Cuffe and Bent Damsgaard. The initial Trustees designated by the Union shall be Morris Weisberger, to represent the unlicensed deck department, S. E. Bennett to represent the unlicensed engine department, and Ed Turner to represent the stewards department. The initial neutral Trustee shall be J. F. Sullivan, Jr.

*SIU Pacific District-PMA Pension Plan—Second Amendment  
(March 31, 1959)*

§ 44

“(c) It is expected that the contributions into the fund, while being deferred compensation, shall not otherwise constitute or be deemed wages to employes. Such amendments shall be made to this agreement and the Declaration of Trust as may be necessary to carry out this intent, provided, they do not otherwise affect the status of this plan under Sections 401, 501, and 404 of the Internal Revenue Code of 1954.”

*SIU Pacific District-PMA Pension Plan—Declaration of Trust*  
(July 31, 1957)

¶ 45

In Witness Whereof, the Trustees have executed this instrument to evidence their acceptance of the said trust and their agreement to be bound by said Pension Plan Agreement as of the day first above written.

UNION TRUSTEES

MORRIS WEISBERGER

ED TURNER

S. E. BENNETT

NEUTRAL TRUSTEE

J. F. SULLIVAN, JR.

ASSOCIATION TRUSTEES

T. E. CUFFE

BENT DAMSGAARD

J. PAUL ST. SURE

*SIU Pacific District-PMA Pension Plan—First  
Amendment to Declaration of Trust*  
(June 26, 1959)

¶ 46

This First Amendment entered into this 26th day of June, 1959, by and between all of the Trustees for the SIU Pacific District-PMA Pension Plan (hereinafter referred to as "Trustees") created by that certain Declaration of Trust dated July 31, 1957,

\* \* \*

T. E. CUFFE

J. PAUL ST. SURE

K. F. SAYSETTE

ED TURNER

MORRIS WEISBERGER

S. E. BENNETT

J. F. SULLIVAN, JR.

The foregoing is approved:

PACIFIC MARITIME ASSOCIATION  
J. PAUL ST. SURE

The foregoing is approved:

SEAFARERS INTERNATIONAL UNION OF  
NORTH AMERICA, PACIFIC DISTRICT  
SAILORS' UNION OF THE PACIFIC  
MORRIS WEISBERGER  
MARINE FIREMEN'S UNION  
S. E. BENNETT  
MARINE COOKS AND STEWARDS—AFL  
ED TURNER

*MFOW-PMA Welfare Plan—Second Amendment*  
(February 1, 1958)

¶ 47

§ 8. *Nonmember Contributions to the Fund.*—Employers who are not member Employers and their employes may, *by making like contributions as required hereunder*, participate in the MFOW-PMA Welfare Plan and obtain the advantages of the Declaration of Trust hereinabove referred to on joint approval of and under terms specified by the Marine Firemen's Union and the Association. Any such Employer may withdraw from participation on written notice to the Trustees and to the Union and the Association three months in advance of such withdrawal, but such withdrawal shall, with respect to contributions made to the date of such withdrawal, be subject to the provisions of Paragraph 4 of the Declaration of Trust relating to the expenditure of the Fund by the Trustees. Any such Employer may be eliminated from participation in the plan by agreement of the Marine Firemen's Union and the Association, provided written notice is given to the Trustees and to such Employer three months in advance of such elimination. [Emphasis added]

SIU Pacific District-PMA Supplemental Benefits Agreement  
(October 1, 1958)

## III.

CONTRIBUTIONS TO SUPPLEMENTAL  
BENEFITS FUND

## § 48

(a) Each member Contributing Employer shall contribute to the Supplemental Benefits Fund for each day of Covered Employment of eligible seamen by such Contributing Employer beginning October 1, 1958, in the manner hereinafter set forth. . . .

\* \* \*

## § 49

*If a Contributing Employer is delinquent or defaults in payment of contributions, the lien against the ship for seamen's wages shall be available to the Trustee and if suit is brought to recover such contributions, interest thereon shall be payable at the rate of 7%, and all costs of collecting such delinquent or defaulted contributions, including a reasonable attorney's fee, shall be paid by the Contributing Employer.*

\* \* \*

## VIII.

ADDITIONAL PARTICIPATION IN THE PLAN

## § 50

(a) Each nonmember company named in Exhibit A shall be deemed a Contributing Employer within the meaning of this Supplemental Benefits Agreement *with respect to employment for which contributions are paid by the company* and, except as herein otherwise expressly provided, this Supplemental Benefits Agreement shall have the same force and effect as if the company had been named as a member Contributing Employer, and "Qualifying Employment" shall include unlicensed employment on the company's vessels with respect to which contributions are paid hereunder. *Days for which the required contributions are paid by any such company and with respect to which the specified reports are filed, shall be days of service in Qualifying Employment in computing eligibility for supplemental benefits.*

\* \* \*

## § 51

This Agreement is dated October 1, 1958.

SEAFARERS INTERNATIONAL UNION OF  
NORTH AMERICA, PACIFIC DISTRICT

SAILORS' UNION OF THE PACIFIC

MORRIS WEISBERGER

MARINE FIREMEN'S UNION

S. E. BENNETT

MARINE COOKS & STEWARDS', AFL

ED TURNER

PACIFIC MARITIME ASSOCIATION

J. PAUL ST. SURE

ALASKA STEAMSHIP CO.

L. C. WESSON

AMERICAN PRESIDENT LINES

GEORGE KILLION

PACIFIC FAR EAST LINE

T. E. CUFFE

## § 52

The assets of the Sailors' and Firemen's Vacation Fund are transferred to SIU Pacific District-PMA Supplemental Benefit Fund, Inc. subject to the terms set forth above and with the approval of the parties to the Agreement establishing such fund:

J. F. SULLIVAN, JR.

MORRIS WEISBERGER

T. E. CUFFE

S. E. BENNETT

J. PAUL ST. SURE

Trustees administering the Sailors' and  
Firemen's Vacation Fund—Declaration  
of Trust dated October 1, 1953

SAILORS' UNION OF THE PACIFIC

MORRIS WEISBERGER

MARINE FIREMEN'S UNION

S. E. BENNETT

PACIFIC MARITIME ASSOCIATION

J. PAUL ST. SURE

§ 53

The assets of the Stewards' Vacation Fund are transferred to SIU Pacific District-PMA Supplemental Benefits Fund, Inc. subject to the terms set forth above and with the approval of the parties to the Agreement establishing such fund:

LOUIS FOYT  
ED TURNER  
K. F. SAYSETTE  
J. PAUL ST. SURE

Trustees administering the Stewards'  
Vacation Fund—Declaration of Trust  
dated December 13, 1955

MARINE COOKS & STEWARDS, AFL  
ED TURNER

PACIFIC MARITIME ASSOCIATION  
J. PAUL ST. SURE

§ 54

SIU Pacific District-PMA Supplemental Benefits Fund, Inc. executes this instrument to evidence its acceptance of the trust set forth above and its agreement to be bound by the SIU Pacific District-PMA Supplemental Benefits Agreement as of the day first above written:

SIU PACIFIC DISTRICT-PMA SUPPLE-  
MENTAL BENEFITS FUND, INC.

J. F. SULLIVAN, JR.  
ED TURNER  
MORRIS WEISBERGER  
K. F. SAYSETTE  
T. E. CUFFE  
S. E. BENNETT  
J. PAUL ST. SURE

Trustees.

*Hearings Before the Subcommittee on Affairs of the Committee on Merchant Marine and Fisheries, House of Representatives, on "Miscellaneous Maritime Bills", 81st Cong., 2d Sess. (1950), Vessel Exhibit C-2, pp. 15-18.*

[15]

THE CHAIRMAN. The subcommittee will now proceed to the consideration of H. R. 8349.

THE SECRETARY OF COMMERCE,  
*Washington, D. C.*

¶ 55

The bill follows the pattern of section 302 (c) (5), Labor Management Relations Act 1917 (Public Law 101, 80th Cong.). That section, however, covers in greater detail the basis of such payments, as well as administration of the fund, and also contains specific provisions concerning payments to provide pensions or annuities. *While this section of the act, as general legislation, has been cited as sufficient basis for making the deductions from seamen's wages for payment into employee welfare funds, a view expressed by the Commandant of the United States Coast Guard under date of April 14, 1950, the bill, if enacted, would remove any doubt concerning such deductions. Senator Magnuson indicated (Congressional Record, April 27, 1950, p. 5933) that confusion existed as to whether deductions from seamen's wages for purposes of a welfare fund are legal and that the bill, which he introduced, would make clear that the restrictions upon allotments from seamen's wages do not extend to voluntary deductions for a welfare plan.*

¶ 56

\* \* \*

It is believed that seamen should have the right to authorize deductions from their wages for payment into welfare funds,

[16]

established as the result of collective bargaining agreements or otherwise, and that any legal doubt as to their validity should be eliminated. [Emphasis added]



TREASURY DEPARTMENT,  
*Washington, August 17, 1950.*

§ 57

It is understood that the proposed legislation has been introduced to resolve any legal conflict which may now exist between the provisions of section 10 of the act of June 28, 1884, as amended, which prohibits deductions from employees' wages except under certain conditions, and section 302 of the Labor-Management Relations Act of 1947, which authorizes payments by an employer to a representative of the employees to a trust fund established for the benefit of the employees.

---

FEDERAL SECURITY AGENCY,  
*Washington, August 21, 1950.*

§ 58

Seamen are now covered by old-age and survivors insurance and unemployment insurance. They should, however, have the same opportunities that other workers have to obtain supplementary protection through private employee, benefit plans. The proposed bill would facilitate the establishment of contributory benefit plans by permitting the employer to make deductions from the seaman's wages for this purpose.

[17]

DEPARTMENT OF LABOR,  
OFFICE OF THE SECRETARY,  
*Washington, October 10, 1950.*

§ 59

Welfare funds are now a frequent subject of collective bargaining in many industries in this country. The amendment of the existing law, as prescribed in the bill, would make it possible, consistent with our national policy of encouraging collective bargaining, for labor and management in the shipping industry to bargain for the joint establishment and support of pension and other welfare plans.

\* \* \*

THE CHAIRMAN. Now we will refer to H. R. 8349, on which you came to testify, Commander, which is a bill to authorize de-

ductions from the wages of seamen for payment into employee-welfare funds.

[18]

STATEMENT OF COMMANDER ROBERT H. FARINHOLT,  
CHIEF, RECORDS AND WELFARE SECTION, MERCHANT  
VESSEL PERSONNEL DIVISION, COAST GUARD

Commander FARINHOLT. Referring to H. R. 8349, this question was presented to us in April of 1950.

¶ 60

We found that, under the provisions of 28 United States Code, 186 (5), the employer of a seaman and the duly elected collective-bargaining representative of the seaman may mutually agree to the establishment of a trust fund, and that the funds for such trust fund may be deducted by the employer from the wages of the seaman who is a member of the union which is serving as the collective-bargaining agent.

¶ 61

In other words, *under that act, as to a seaman who is not a member of a union, a deduction cannot be made from his wages.* In the case of this bill, the way we understand it, it would allow such a deduction from the wages of a seaman regardless of whether or not he was a member of a union; and, therefore, we are in favor of it. [Emphasis added]

*Service Contract Act of 1965, Public Law 89-286; Stat. 1034 (October 22, 1965)*

The obligation under the subparagraph [to pay the prevailing level of fringe benefits in addition to prevailing cash payments] may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary.

*Fourth Amendment of Mortgage on SS Coast Progress (ex Nevadan), Official number 249264 (Exhibit I to petition; see C.T. 825: 17-18)*

¶ 63

This agreement made as of the 29 day of October, 1959, between United States of America, represented by the U. S. Department of Commerce, acting through the Maritime Administrator, successor to the United States Maritime Commission (hereinafter called the "Mortgagee"); and Coastwise Line, a corporation organized and existing under the laws of the State of Oregon (hereinafter called the "Mortgagor"),

WITNESSETH:

Whereas:

¶ 64

1. Under date of January 22, 1951, American-Hawaiian Steamship Company (Del.) executed and delivered to the Mortgagee a promissory note (hereinafter sometimes called the "note") in the original principal sum of One Million One Hundred Sixty Thousand Four Hundred Dollars (\$1,160,400.00), payable in fifteen (15) consecutive and equal installments of Seventy-Seven Thousand Three Hundred Sixty Dollars each (\$77,360.00), serially one installment each year thereafter over a period of fifteen (15) years, the date of payment respectively being January 22 of the years set opposite their numbers hereinbelow:

Installment	Year of Payment	Installment	Year of Payment
1 .....	1952	9 .....	1960
2 .....	1953	10 .....	1961
3 .....	1954	11 .....	1962
4 .....	1955	12 .....	1963
5 .....	1956	13 .....	1964
6 .....	1957	14 .....	1965
7 .....	1958	15 .....	1966
8 .....	1959		

The principal bearing interest at the rate of 3½% percent per annum payable January 22 and July 22 of each year; and

\* \* \*

## § 65

Now, Therefore, in consideration of the premises and the mutual and dependent covenants, promises and agreements hereinafter set forth, the parties hereto agree as follows:

## § 66

First: Notwithstanding any provision to the contrary in the Mortgage, as amended, or in the note, the installments of principal otherwise due on January 22, 1959, and on January 22, 1960, shall be due and payable on January 22, 1965.

## § 67

Second: The second paragraph of Section 9 of Article I of the Mortgage is hereby amended by deleting the word "and" at the end of item 6 and by deleting the following words and figures:

"7. No salary at a rate in excess of \$25,000 per annum shall be paid,

if after such transaction, the amount of working capital or the amount of net worth thereby would be reduced below the minima prescribed in or required under subdivisions (ii) and (iii), respectively, of subparagraph (2) of paragraph (a) of Section 299.21, as amended, of the Regulations; and"

and inserting in lieu thereof the following words and figures:

"7. No salary (including the value or amount of any bonus, commission or other form of direct compensation) at a rate in excess of \$25,000 per annum shall be paid; and

"8. No fixed assets shall be purchased or acquired;

unless the prior written approval of the Mortgagee is first obtained; and"

*Amendment of Preferred Mortgage on SS Coast Progress (ex Nevadan), Official number 249264 (Exhibit N to petition; see C.T. 832: 22-833:2)*

## § 68

This agreement made as of the 29th day of October, 1959, between The Bank of New York, a corporation organized and existing under and by virtue of the laws of the State of New York (hereinafter called the "Mortgagee"), and Coastwise Line, a corporation organized and existing under the laws of the State of Oregon (hereinafter called the "Mortgagor"),

## WITNESSETH:

Whereas:

§ 69

1. Under date of June 26, 1957, the Mortgagor, which is now the sole owner of the whole of the vessel SS Coast Progress (ex NEVADAN), of San Francisco, California, Official Number 249264 (hereinafter called the "Vessel"), executed and delivered to the Mortgagee a four and three-quarters percent ( $4\frac{3}{4}\%$ ) Preferred Ship Mortgage Note (hereinafter called the "Note") in the amount of Seven Hundred Eighty Thousand Dollars (\$780,000.00) payable in twenty-three (23) quarterly installments; the first twenty-two (22) of such installments being each in the amount of Thirty-Four Thousand Dollars (\$34,000.00) and the twenty-third being in the amount of Thirty-Two Thousand Dollars (\$32,000.00) payable on the 26th day of each September, December, March and June, beginning on September 26, 1957 until paid, together with interest at the rate of four and three-quarters percent ( $4\frac{3}{4}\%$ ) per annum; and

§ 70

2. The Note is secured by a Preferred Ship Mortgage dated June 26, 1957 (hereinafter called the "Mortgage"). . . .

\* \* \*

§ 71

7. The Mortgagee, the United States of America as Mortgagee under the First Mortgage, and the United States of America in its capacity as insurer of the Mortgage, have agreed with Mortgagor to postpone the payment of certain installments due under the Note and under the note secured by the First Mortgage; and Mortgagor has agreed, in consideration of the postponement of such installments, to amend the Mortgage and the Note in the manner hereafter provided.

§ 72

Now, Therefore, in consideration of the premises and the mutual and dependent covenants, promises and agreements hereinafter set forth, the parties hereto agree as follows:

§ 73

First: Notwithstanding any provision to the contrary in the Mortgage, as amended, or in the Note, the installments of principal otherwise due on December 26, 1959, March 26, 1960, June 26, 1960, and September 26, 1960, shall be due and payable on March 26, 1963. The Mortgagor covenants that upon request of

the Mortgagee, the Mortgagor will make an appropriate endorsement on the Note of the contents of this paragraph.

¶ 74

Second: The Mortgagee consents to the execution by the Mortgagor of the Amendment of the First Mortgage executed and delivered simultaneously herewith.

¶ 75

Third: Clause 24 of Article I of the Mortgage is hereby amended to read as follows:

“Clause 24. (a) The Mortgagor, by a separate agreement (herein called the “Restricted Fund Agreement”), has established and agreed to maintain a fund to be known as, and herein called, the ‘Restricted Fund’.

*Fifth Amendment of Mortgage on SS Coast Progress (ex Nevadan) Official number 249264 (Exhibit J to petition; see C.T. 625: 20-32)*

¶ 76

This Agreement, made as of the 22nd day of December, 1960, between United States of America, represented by the U. S. Department of Commerce, acting through the Maritime Administrator, successor to the United States Maritime Commission (hereinafter called the “Mortgagee”); and COASTWISE LINE, a corporation organized and existing under the laws of the State of Oregon (hereinafter called the “Mortgagor”),

WITNESSETH:

Whereas:

¶ 77

\* \* \*

2. The note is secured by that First Preferred Mortgage on the vessel SS Coast Progress (ex Nevadan), Official Number 249264, of San Francisco, California (hereinafter called the “Vessel”), given by American-Hawaiian Steamship Company (Del.) to the Mortgagee bearing date of January 22, 1951, and recorded in the office of the Collector of Customs at New York, New York, on February 1, 1951, at 4:34 P.M. in Record Book No. PM 111, at page 84 (hereinafter sometimes called the “Mortgage”); and

\* \* \*

¶ 78

9. . . . [T]he unpaid balance of the principal of such Second Mortgage was insured in accordance with the provisions of Title XI of the Merchant Marine Act, 1936, as amended; and

\* \* \*

11. The Mortgagee, The Bank of New York as Mortgagee under the Second Mortgage, and the United States of America in its capacity as insurer of the Second Mortgage, have agreed with Mortgagor to postpone the payment of those certain installments due on January 22, 1961 and December 26, 1960, under the note and under the Second Mortgage Note, respectively; and Mortgagor has agreed, in consideration of the postponement of such installments, to amend the Mortgage and the note in the manner hereafter provided.

¶ 79

Now, Therefore, in consideration of the premises and the mutual and dependent covenants, promises and agreements hereinafter set forth, the parties hereto agree as follows:

¶ 80

First: Notwithstanding any provision to the contrary in the Mortgage, as amended, or in the note, the installment of principal otherwise due on January 22, 1961, shall be due and payable on March 26, 1961, together with any interest then accrued on the note.

¶ 81

Second: The Mortgagee consents to the execution and delivery by Mortgagor of the Second Amendment to the Second Mortgage executed and delivered simultaneously herewith.

*Second Amendment of Preferred Mortgage on SS Coast Progress (ex Nevadan), Official no. 249264 (Exhibit O to petition; see C.T. 633:4-15)*

¶ 82

This Agreement made as of the 22nd day of December, 1960, between The Bank of New York, a corporation organized and existing under and by virtue of the laws of the State of New York (hereinafter called the "Mortgagee") and Coastwise Line, a corporation organized and existing under the laws of the State of Oregon (hereinafter called the "Mortgagor"),

## WITNESSETH:

Whereas:

¶ 83

\* \* \*

3. Installments 1, 2, 3, 4, 5, 6, 7, 8, and 9 of the Note in the aggregate amount of Three Hundred Six Thousand Dollars (\$306,000.00) have been paid, and there remains outstanding an aggregate amount of Four Hundred Seventy-Four Thousand Dollars (\$474,000.00) payable in quarterly installments as above set out; and

¶ 84

4. Installments 10, 11, 12 and 13 of the Note due December 26, 1959, March 26, 1960, June 26, 1960 and September 26, 1960, respectively, were postponed until March 26, 1963 by an Amendment of Preferred Mortgage dated as of the 29th day of October, 1959 between the Mortgagor and the Mortgagee, which Amendment of Preferred Mortgage was recorded in the office of the Collector of Customs for the Port of San Francisco-Oakland, California on November 2, 1959, at 11:29 A.M. in Record Book 12 P.M., at page 35 (the Preferred Ship Mortgage hereinabove referred to as so amended by said Amendment of Preferred Mortgage being hereinafter called the "Mortgage"); and

¶ 85

5. On June 26, 1957, the United States of America and the Mortgagee executed a Contract of Insurance of Mortgage, Contract No. MA-1570 pursuant to which the unpaid interest on and the unpaid balance of the principal of such Preferred Ship Mortgage was insured in accordance with the provisions of Title XI of the Merchant Marine Act, 1936, as amended, which Contract of Insurance of Mortgage was amended by an Amendment dated as of the 29th day of October, 1959 (said Contract of Insurance of Mortgage, as so amended, being hereinafter called the "Insurance Contract"); and

¶ 86

\* \* \*

8. The Mortgagee, the United States of America as Mortgagee under the First Mortgage, and the United States of America in its capacity as insurer of the Mortgage, have agreed with Mortgagor to postpone the payment of those certain installments



due December 26, 1960 and January 22, 1961 under the Note and under the note secured by the First Mortgage, respectively, and Mortgagor has agreed, in consideration of the postponement of such installments, to amend the Mortgage and the Note in the manner hereafter provided.

§ 87

Now, Therefore, in consideration of the premises and the mutual and dependent covenants, promises and agreements hereinafter set forth, the parties hereto agree as follows:

§ 88

First: Notwithstanding any provision to the contrary in the Mortgage, as amended, or in the Note, the installment of principal otherwise due on December 26, 1960, shall be due and payable on March 26, 1961.

*Notice of Accelleration and Demand for Immediate Payment*  
(Exhibit K to petition; see C.T. 628: 21-629-11)

U. S. DEPARTMENT OF COMMERCE  
Maritime Administration  
Washington 25, D. C.

May 1, 1961

Coastwise Line

\* \* \*

§ 89

Pursuant to Section 1 of Article II of the Mortgage, the United States of America, represented by the U. S. Department of Commerce, acting through the Maritime Administration, hereby (1) declares all the principal sum of the Mortgage Note now outstanding, with the accrued and unpaid interest thereon, to be due and payable immediately with the effect as provided in the Mortgage that the same shall become and is immediately due and payable, and thereafter shall bear interest at the rate of 6% per annum; and (2) demands that full and immediate payment be made to it of all the principal sum of the Mortgage Note now outstanding in the amount of \$541,520.00 and the accrued and unpaid interest thereon to the date hereof in the amount of \$5,140.73, together with interest on said outstanding principal

sum and on said accrued and unpaid interest at the rate of 6% per annum from and after the date of this declaration until paid.

\* \* \*

Thos. E. Stakem  
Maritime Administrator

*Notice of Acceleration and demand for immediate payment*  
(Exhibit V to petition; see C.T. 638:31-639:20)

U. S. DEPARTMENT OF COMMERCE  
Maritime Administration  
Washington 25, D. C.

May 1, 1961

Coastwise Line

¶ 90

\* \* \*

Pursuant to Clause 1 of Article II of the Mortgage, the United States of America, represented by the Secretary of Commerce, acting by and through the Maritime Administrator, hereby (1) declares the Note to be due and payable immediately with the effect as provided in the Mortgage and Note that the entire unpaid principal of and unpaid interest on the Note shall become and is immediately due and payable and that thereafter the entire unpaid principal of the Note shall bear interest at the rate of 6% per annum as provided in the Note; and (2) demands that full and immediate payment be made to it of the entire unpaid principal of the Note in the amount of \$474,000.00 and the unpaid interest thereon to the date hereof in the amount of \$7,900.35, together with interest on said unpaid principal at the rate of 6% per annum from and after the date of this declaration until paid.

\* \* \*

*Opinion of the Maritime Subsidy Board,**Department of Commerce, Maritime Administration,*

Docket No. A-14, July 13, 1965 (Trustee Exhibit D-A, 12-18).

## ¶ 91

II. *Pension and welfare benefits, and employer contributions thereto, should be reasonable, predictable, and not inimical to the long range manpower needs of the industry.*

## ¶ 92

The agreement before us provides for pension contributions by the employer which are, at least in part, based not on a specific rate of contribution, but on an agreed level of benefits for which employees will be eligible.

## ¶ 93

In the wage review of June 16, 1963 (which was to have been limited to increases not to exceed 3½% of base wages), AMA and MEBA concluded an agreement under which pension benefits were increased to \$300 per month. . . .

These benefits represent a huge potential liability to the employers, inasmuch as the benefit plan so established is largely unfunded by past contributions.

## ¶ 94

Indeed, at page 24 of the "MEBA Pension Trust—Actuarial Valuation and Review for the Year Ended December 31, 1961—June, 1963," submitted by AMMI, it is indicated that a guaranteed pension of \$300 per month would impose on the employers an unfunded accrued liability slightly in excess of \$85,000,000. . . .

## ¶ 95

. . . [B]ecause of the enormous unfunded liability of the employers, it appears certain that these contributions will be greatly increased in the future.

## ¶ 96

Not only are pension benefits of \$300 monthly with 20 years of service (regardless of age) very expensive for the employer, they are also considerably in excess of the benefits which workers in other industries are now provided.

\* \* \*

The Pension Plan of MEBA is unique among those listed in the above table in that there is no minimum age requirement.

\* \* \*

The above considerations are necessarily relevant to the Board's determination of what constitutes a subsidizable pension plan.

\* \* \*

### ¶ 97

The operators are therefore called upon to submit to the Board for its review, not later than September 30, 1965, a pension plan which takes into consideration the matters discussed above, and which, on the basis of sound actuarial calculation, can be shown to involve employers' contributions which, together with other wage costs, do not exceed acceptable limits in the light of the Presidential guideline.

### ¶ 98

The Board wishes to reemphasize that its subsidization of contributions to pension funds will be limited on a contribution basis as indicated, and that the operators should exercise some care and caution in accepting pension agreement terms that may create substantial unsubsidized obligations in the future.

### ¶ 99

We will consequently approve as eligible for subsidy only those contributions which, supported by a thorough actuarial study, approved by the Board, are found to be required to fund such a plan.

*Opinion and Order of the Secretary of Commerce, Maritime Subsidy Board Dockets A-14; A-15; and A-16, July 23, 1965, (Vessels' Exhibit D, 7-8).*

### ¶ 100

It is relevant to consider in each case any current general guideline such as that contained in the 1965 Economic Report of the President [transmitting the Annual Report of the Council of Economic Advisers], which is "That general guide for wages is that the percentage increases *in total employee compensation per man-hour* be equal to the national trend rate of increase in output per man-hour". [1965 Report, p. 108] [Emphasis added]